

## RESPONSE AFTER FINAL ACTION

Appln. No. 10/606,498

Docket No. 442005-00105

### REMARKS

Claims 1, 4-8, 10-13, 16-17, 19-24, and 26 are pending in the application. Claims 1, 4-5, 8, 10-13, 17, 19, 22-24, and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lowery et al. (U.S. Patent No. 6,962,029). Claims 6-7 and 20-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lowery et al. in view of an examiner's modification of the reference. Claim 16 stands rejected under 35 U.S.C. § 103(a) over Lowery et al. in view of Haslem et al. (U.S. Patent No. 6,089,522). We acknowledge the Examiner's objection to the listing of claims presented in the prior response and extend our thanks for the Examiner's correction of this typographical error.

The Applicants respectfully request consideration of these remarks under 37 C.F.R. § 1.116(b)(3), as the Office's position concerning the interpretation of the claims with reference to the Lowery et al. reference is newly presented and exceeds the broadest reasonable interpretation that could have been expected by the Applicants under the standards summarized in MPEP § 2111. The Applicants further request entry of an amendment to dependent claim 4 under 37 C.F.R. § 1.116(b)(2), as the amendment eliminates an apparent conflict between the "each of the at least one pair of notches" language recited in present dependent claim 4 and the "at least two pairs of diametrically opposed notches" limitation recited in base claim 1, thereby placing the claim in better form for consideration on appeal.

#### *Rejection of claims 1, 4-5, 8, 10-13, 17, 19, 22-24, and 26 under 35 U.S.C. § 102*

The Applicants respectfully dispute the Office's analysis of the Lowery et al reference. The Office alleges that (1) Lowery et al. discloses "each notch comprising a bearing surface defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface," and (2) Lowery et al. discloses "each of the at least one pair of notches is connected by a bridge therebetween, the bridges connecting the troughs of the notches." Office Action of 5/3/2006 at page 3 (parenthetical citations to structure omitted). In

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both instances, the structure cited can only be associated with the Applicants' claims through an unreasonably broad and/or contrary misconstruction of portions of said limitations. If the Applicants' claim limitations are properly construed as a whole in accord with the standard summarized in MPEP § 2111, the structure is clearly neither present nor arranged as required by the Applicants' claims. As such, the Office's present rejections violate the standard for anticipation summarized in MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found... in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

*(1) The allegation that Lowery et al. discloses "each notch comprising a bearing surface defined by a lip..."*

With respect to the first identified assertion, we note that the Applicants' independent claim 1 requires "[a] receiving area adapted to receive the concrete reinforcement members and including at least two pairs of diametrically opposed notches" and additionally requires that "each notch comprises a bearing surface defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface." We also note that the Applicants' independent claim 17 requires "[a] receiving area adapted to receive the concrete reinforcement members, the receiving area including a first and second pair of notches" and similarly requires that "each notch comprises a bearing surface defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface." The Office alleges that Lowery et al. discloses "each notch comprising a bearing surface (32 figure 3) defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface." Office Action of 5/3/2006 at page 3.

Lowery et al. discloses that element 32 is a floor member, and that setting 4 includes four flexible prongs 28, 29, 30, and 31 vertically extending from floor member 32, the prongs being shaped to form two pairs of aligned opposing slots 33, 34, the slots shaped to have a wire holding section 40, '029 patent, col. 4 l. 62 to col. 5 l. 5. Lowery does not disclose that floor member 32

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defines or adjoins any portion of slots 33, 34 or wire holding section 40. In addition, Figs. 2 and 6 clearly show that floor member 32 is disposed well below the bottom of each slot 33, 34 and each wire holding section 40.

The cited claim limitations require that "each notch comprises a bearing surface," and as a consequence such a structure must be provided at a notch feature rather than in mere association with structure that itself comprises a notch. We respectfully argue that floor member 32 in Lowery et al. is not an element of a notch. Rather, it is clear that floor member 32 could be entirely omitted from the Lowery et al. chair without altering any portion of slots 33, 34, wire holding sections 40, or any other structure that may receive a concrete reinforcing member. In addition, the Applicants' claims clearly preclude the Office's present interpretation, as independent claim 1 requires that "the two pairs of diametrically opposed notches have different depths" and independent claim 17 requires that "the first pair of notches [be] deeper than the second pair of notches," respectively. Said pairs of notches cannot have different depths and cannot be deeper than one another if they include the plainly horizontally disposed floor member 32 or the plainly vertically symmetric structure disposed below it. The Office must give proper effect to all of the Applicants' claim limitations and to adopt a consistent claim construction throughout the Applicants' claims. Since Lowery et al. does not disclose "each and every element as set forth in the claim," *Verdegaal Bros.*, 814 F.2d at 631, then as a matter of law the reference cannot properly anticipate the presently rejected claims.

The Applicants further respectfully dispute the Office's construction of the term "bearing surface" as including floor member 32. When comparing the claims against a prior art reference, an examiner is required to give the pending claims their broadest reasonable interpretation consistent with the specification and consistent with the interpretation that those skilled in the art would reach. MPEP § 2111. Figs. 1 and 4 in the Lowery et al. reference clearly show that the wire holding sections 40 support the disclosed wire mesh and that floor member 32 does not directly contact or support any such structure. Therefore, the parenthetical assertion that floor

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member 32 constitutes a "bearing surface" fails to satisfy both the first requirement, see, e.g., Applicants' specification ¶0024, and the second requirement of MPEP § 2111, see, e.g., the class definition for U.S. Patent Subclass 384/2, which is cited only as evidence of a plain and ordinary meaning. The broadest reasonable interpretation of the term "bearing surface" in relation to the phrase "notch comprising a bearing surface" cannot include structure that merely adjoins other structure that may receive a concrete reinforcing member.

The Applicants additionally and respectfully note that the Office has not identified structure that constitutes a bearing surface that is "defined by a lip" configured as required in the quoted claim limitations. Figs. 3 and 6 in the Lowery et al. reference clearly show that the alleged "bearing surface," floor member 32, constitutes a continuous transverse surface adjoining the four flexible prongs 28, 29, 30, and 31, such that floor member 32 is axiomatically incapable of providing any sort of "lip" within the plain and ordinary meaning of the term. Lowery et al. does not disclose any other structure that may constitute a lip having the required configuration. Since Lowery et al. does not disclose "each and every element as set forth in the claim," *Verdegaal Bros.*, 814 F.2d at 631, then as a matter of law the reference cannot properly anticipate the presently rejected claims.

The Applicants respectfully submit that the Lowery et al. reference does not disclose any structure where "each notch comprises a bearing surface defined by a lip extending inwardly from the outer surface such that the bearing surface is cantilevered beyond the inner surface" and where structure fulfilling quoted claim limitations is present at each notch. Because such structure is not disclosed, the Lowery et al. reference can neither anticipate the Applicants' independent claims 1 and 17, nor the Applicants' dependent claims 4-5, 8, 10-13, 19, 22-24, and 26. The Applicants' respectfully request that the Office withdraw its rejection of said claims issued in the previous office action, as well as the finality of said action.

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*(2) The assertion that Lowery et al. discloses "...bridges connecting the troughs of the notches"*

With respect to the second identified assertion, we note that the Applicants' dependent claim 4\* requires that "each of the pairs of notches is connected by a bridge therebetween, the bridge connecting the troughs of the notches" and the Applicants' dependent claim 19 requires that "a bridge extends between each of the pairs of notches, the bridge joining the medial, lowest portions of the notches." The Office alleges with respect to the rejection of claim 4 that Lowery et al. discloses "each of the at least one pair of notches is connected by a bridge (16, 17a, 18a, 18b) therebetween, the bridges connecting the troughs of the notches." Office Action of 5/3/2006 at page 3. The Office similarly alleges with respect to the rejection of claim 19 a disclosure of "the bridge joining the medial, lowest portions of the notches." *Id.* at page 4.

Lowery et al. discloses that elements 15 and 16 are perpendicularly intersecting arches that form upper section 10 of support structure 3, each arch having a pair of opposing compressible resilient legs 17a, 18a and 17b, 18b. '029 patent, col. 4 ll. 33-30. It further discloses that setting 4 is affixed to the exterior surface of upper section 10 of support structure 3, and includes four flexible prongs 28, 29, 30, and 31 vertically extending from floor member 32, the prongs being shaped to form two pairs of aligned opposing slots 33, 34, the slots shaped to have a wire holding section 40, '029 patent, col. 4 l. 62 to col. 5 l. 5. Notably, with reference to Figs. 1 and 3, Lowery et al. clearly discloses that the alleged "bridge" intersects the underside of floor member 32, whereas the wire mesh is received in the aligned opposing slots 33, 34 and wire holding sections 40 in the four flexible prongs 28, 29, 30, and 31 that extend vertically from the opposite or top side of floor member 32.

Even if the identified structure is properly construed to be a "bridge", we note that dependent claims 4 and 19 require that "the bridge [connect] the troughs of the notches " or that

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\* Assuming that the Applicants' amendment to claim 4 is entered pursuant to 37 C.F.R. § 1.116(b)(2).

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"the bridge [join] the medial, lowest portions of the notches," respectively. We respectfully invoke the arguments presented with respect to independent claims 1 and 17, particularly, that floor member 32 in Lowery et al. is not properly construed as an element of a notch. Because floor member 32 is not a notch, structure such as arches 15, 16 which merely intersect the side of floor member 32 opposite the side facing any structure constituting a notch cannot satisfy the quoted dependent limitations. In addition, since dependent claims 4 and 19 incorporate each and every limitation of their respective base claims, and since base claim 1 requires that "the two pairs of diametrically opposed notches have different depths" and base claim 17 requires that "the first pair of notches [be] deeper than the second pair of notches," the Applicants' respectfully argue that the clearly vertically symmetric arches 15, 16 cannot possibly connect the troughs of the notches, as claimed in dependent claim 4, or join the medial, lowest portions of the notches, as claimed in dependent claim 19, without modification because the symmetric structure cannot possibly satisfy the limitations when the notches have different depths. Since Lowery et al. does not disclose "each and every element as set forth in the claim," *Verdegaal Bros.*, 814 F.2d at 631, then as a matter of law the reference cannot properly anticipate the presently rejected claims.

The Applicants respectfully submit that the Lowery et al. reference does not disclose any structure which both satisfies the limitations of independent claim 1 and the limitation that "each of the pairs of notches is connected by a bridge therebetween, the bridge connecting the troughs of the notches at least two pairs of diametrically opposed notches". The Applicants further submit that Lowery et al. reference does not disclose any structure which both satisfies the limitations of independent claim 17 and the limitation that "a bridge extends between each of the pairs of notches, the bridge joining the medial, lowest portions of the notches." Because such structure is not disclosed, the Lowery et al. reference can neither anticipate the Applicants' dependent claim 4 nor the Applicants' dependent claim 19. The Applicants' respectfully request that the Office withdraw the rejection of said claims issued in the previous office action.

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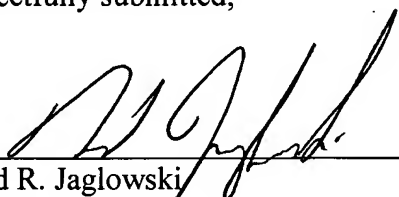
*Rejection of claims 6-7, 16, and 20-21 35 U.S.C. § 103(a)*

Claims 6, 7 and 16 depend from independent claim 1 and claims 20 and 21 depend from independent claim 17. Accordingly, for at least the reasons stated above, and in view of the fact that the previously discussed structure and claim limitations are not separately found neither in the Examiner's modification to Lowery et al. (claims 6-7 and 20-201) nor in Haslem et al. (claim 16), the Applicants respectfully request that the Office withdraw the rejection of said claims issued in the previous office action.

*Conclusion*

In view of the foregoing remarks, the Applicants respectfully submit that the finality of the prior office action was premature and that the outstanding rejections should be withdrawn. The Applicants further submit that the claims are allowable over the art of record and pray for a prompt allowance. We hereby authorize the Commissioner under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application which requires an extension of time as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,

  
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